IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

WP(C).No. 32828 of 2005(G)

AGAINST THE ORDER IN IA 2369 2001 IN OS.396/1998 of MUNSIFF COURT, THALASSERY

.....

PETITIONERS: DEFENDANTS 1,2,5

----

1. V.JAMEELA, D/O.KHADEEJA,
AGED 54 YEARS, RESIDING AT VELUMBERI HOUSE,
CHEMBILODE, NR KOYYODE U.P.SCHOOL,
KANNUR.

2. V.ABDULLA HAJI, S/O.KHADEEJA,
AGED 60 YEARS, RESIDING AT DO. DO.

3. V.RASHEEDA,
D/O.JAMEELA, AGED 25 YEARS,
DO. DO.

BY ADV. SRI.A.MOHAMED MUSTAQUE
SRI.M.K.SUMOD

RESPONDENTS: DEFENDANTS 6-8 & PLAINTIFFS

----

1. V.SAKEENA, W/O.AHMED KUTTY,
AGED 59 YEARS, RESIDING AT VILLA AHAMADAS,
NEAR THAZHE MOWANCHERRY MASJID,
MOWANCHERY.P.O, KANNUR DT.

2. V.SAFIYA, D/O.SAKEENA,
AGED 42 YEARS, DO. DO.

3. V.MUHAMMED, S/O.SAKEENA,
AGED 35 YEARS, DO. DO.

4. V.ZAINUDHEEN, S/O.SAKEENA,
AGED 33 YEARS, DO. DO.

5. V.NASEEMA, D/O.SAKEENA,
AGED 32 YEARS, DO. DO.

6. V.ZEENATH, D/O.SAKHEENA,
AGED 28 YEARS, DO. DO.

7. V.SHAMEENA, D/O.SHAKHEENA,
AGED 25 YEARS, DO. DO.

8. V.SAMEER, S/O.SAFIYA,
NOW MAJOR, DO. DO.

9. V.SAHEER, S/O.SAFIYA,
AGED 19 YEARS,
DO. DO.

10. V.SHAMSEER, S/O.SAFIYA,
(MINOR), BY GUARDIAN V.SAFIYA, DO. DO.

11. V.SUHAIRA, D/O.SAFIYA,
(MINOR), BY GUARDIAN V.SAFIYA, DO. DO.

12. V.SALEEMA, D/O.SAFIYA(MINOR),
BY GUARDIAN V.SAFIYA, DO. DO.
(RESPONDENTS 10-12 MINOR BY GUARDIAN V. SAFIYA 2ND RESPONDENT)

13. SUBINAS, D/O.NASEEMA (MINOR),

14. V.SUHANA, D/O.NASEEMA (MINOR),
(RESPONDENTS 13 & 14 MINORS BY GUARDIAN MOTHER
NASEEMA 5TH RESPONDENT)

15. V.NAFSHEERA, S/O.SEENATH.

16. V.NASEEF, S/O.SEENATH,
(RESPONDENTS 15 & 16 MINORS BY GUARDIAN ZEENATH
6TH RESPONDENT)

17. V.ABDUL RASHEED,
S/O.SAKHEENA, AGED 46 YEARS,
RESIDING AT VILLA AHAMADAS,
NEAR THAZHE MOWANCHERRY MASJID,
MOWANCHERRY.P.O, KANNUR DT.

18. V.SHAMSUDHEEN,
AGED 42 YEARS, DO. DO.

19. V.ISMAIL, S/O.SAKHEENA,
AGED 37 YEARS, DO. DO.

R1 TO R3 R6 TO R9 AND R18 BY ADV. RAJESH V. NAIR
BY ADV. SRI.R.PARTHASARATHY
SMT.S.LAKSHMY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 32828/2005

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE COMMISSION REPORT, PLAN ACCOUNT AND SHARE LIST.

EXT.P2. COPY OF THE AFFIDAVIT FILED BY THE PETITIONER.

EXT.P3. COPY OF THE PETITION IN IA NO. 2379/05.

EXT.P4. COPY OF THE COUNTER AFFIDAVIT FILED BY THE RESPONDENTS BEFORE THE MUNSIFF COURT, THALASSERY.

EXT.P5. COPY OF THE ORDER IN IA NO. 2379/05 IN IA NO. 2369/01 IN OS NO. 396/98 DT. 25/10/2005 OF THE MUNSIFF COURT THALASSERY.

True copy

tga

PIUS C. KURIAKOSE, J.

.....

W.P.(C)No.32828 OF 2005

.....

DATED THIS THE 5th JULY, 2007

J U D G M E N T

Ext.P5 order passed by the learned Munsiff on an application submitted by the petitioners-defendants 1, 2 and 5 in a suit for partition presently facing final decree proceedings is under challenge. The learned Munsiff dismissed the application observing that the commissioner has not committed any material irregularity and that it is open to the petitioners to substantiate their objections by examining the commissioner at the time of enquiry.

2. Mr.M.K.Sumod, learned counsel for the petitioners invited my attention to para.3 of the affidavit in support of Ext.P3 application submitted by the petitioners as well as to Ext.P4 objections which were filed by the respondents-plaintiffs to Ext.P3. The learned counsel submitted that in Ext.P4, the averment in para.3 of the affidavit in support of Ext.P3 had not been denied and therefore the learned Munsiff could have very well allowed the application on the basis that the averments are uncontroverted.

3. Mr.Parthasarathy, learned counsel for the respondents does not agree. He would invite my attention to para.2 of Ext.P4 itself and submit that previously the petitioners filed an application to set aside

the commission report and when that application came up for consideration, the petitioners themselves submitted before the court that it will suffice if the objections to the report are recorded. In this way, the petitioners also virtually agreed that the question whether the commissioner's report should be accepted or should be remitted can be considered after evidence is taken in the matter.

4. Having considered the rival submissions, I am of the view that it cannot be said that Ext.P5 is vitiated to the extent of justifying interference by this Court under the supervisory jurisdiction. In my view, the petitioners do not have to be aggrieved about Ext.P5. I repel the challenge against Ext.P5. But I make it clear that the learned Munsiff will be bound to afford sufficient opportunity to the petitioners for cross-examining the commissioner and for adducing whatever other evidence they have for substantiating their objections to the commissioner's report. Once the entire evidence comes on record regarding the commissioner's report, the court below will hear the parties on the acceptability of the report and pass an order. It is only thereafter the learned Munsiff will take up the final decree application.

The Writ Petition is disposed of as above.

Tgl/- **(PIUS C.KURIAKOSE, JUDGE)**